

REMARKS

Upon entry of the present amendment the claims under consideration are 1-46. All Claims stand as rejected. Applicants respectfully traverse all rejections and request reconsider of the rejections based on the following discussion. The Examiner's Detailed Action of 12 July 2004 will now be addressed with reference to any subject headings and paragraph numbers therein.

The final Detailed Action repeats verbatim the rejections as set forth in the non-final Office Action of 12 January 2004. Applicants herewith reiterate and incorporate by reference all discussion of the outstanding rejections as contained in their Amendment B, filed 07 April 2004. Applicants' below discussion will focus on the Detailed Action's "Response to Arguments" section in order to clarify the issues for reconsideration and appeal if necessary.

Claim Rejections 35 USC § 102

Claims 1-6, 14-17, 26-33, 35, 38, and 41-46 stand rejected as anticipated by Wilson, US Patent 3,039,466 (hereinafter "Wilson"). Applicants respectfully traverse these rejections.

It is the contention of the Detailed Action that Wilson teaches all limitations of Independent claims 1 and 26. In response to Applicant's observation that Wilson does not teach a "disposable pant garment" as required by Claims 1 and 26, it the contention of the Detailed Action that no structural differences between the claimed invention and the prior art stem from the limitation "the entirety of the garment is disposable" and that "The pant garment disclosed by Wilson is fully capable of being disposed of in its entirety." (page 7, first paragraph)

However, it is apparent that the art recognizes what is disposable and is not disposable. Wilson itself refers to its removable liner or insert as disposable (e.g., at col. 1, line 20, line 26, line 33) while its cover member 12 receives no such description of disposability. It is further submitted that there are readily apparent structural differences between disposable and nondisposable garments. Any person having ordinary skill in the art of making, using, or selling garments can readily distinguish when a garment is “disposable” by considering the materials used, the construction techniques employed, and the practical ability to accommodate reuse.

Further, the Examiner has ignored the definition of “disposable” set forth by Applicants in the specification and has applied a different and infinitely more expansive definition.

Per page 7, line 15 of the application:

“Disposable” refers to articles which are designed to be discarded after a limited use rather than being laundered or otherwise restored for reuse.

The cover member of Wilson is clearly intended to be restored for reuse by removal of a soiled disposable liner and insertion of a clean liner.

The Examiner’s applied definition includes any object which can be “disposed of in its entirety.” In this sense, an ocean going vessel may be “disposable” since it can be deliberately scuttled at sea to “dispose” of it, and yet no one would consider the ocean going vessel to be “disposable.” Clearly the Examiner has ignored the teachings of the specification and the cited art itself, and applied an unreasonable definition to the language of the Claims. It is therefore requested that the present rejections be reconsidered and withdrawn.

Applicants previously noted with respect to Claim 14 that the front and back panels of Wilson are not “bonded” to the chassis but are integral therewith. Applicants are unsure of the meaning of the Detailed Action’s response since the second paragraph at page 7 of the Detailed Action only notes that “applicant does not claim exact dimensions of these panels.” If the Examiner contends that the folded over reinforcing edge 30a of Fig. 21 is the “side panel” of Wilson, this is clearly inconsistent with both the commonly understood meaning within the art and teachings of the present specification.

Per MPEP § 2101.01, the PTO is to apply “to verbiage of the proposed claims the broadest reasonable meaning...taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant’s specification.” [emphasis added] from *In re Morris*, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997).

Proper interpretation of the claimed side panels, and precluding the reinforced side edges of Wilson, is supported in the specification, e.g., at page 29, line 22 wherein the panel portions 34, 134 are described as “extending from the chassis portion.” No reasonable interpretation of a side panel “extending from the chassis portion” could include the reinforced edge 30a (Fig. 21) of Wilson’s cover member 12. By Wilson’s own terms, 22, 24 28 and 32 (and variants thereof, e.g. 24a) are “edge portions” (see col. 5, line 21) or “side edge portions” (see col. 2, line 68) (emphasis added). Nowhere are these edges referred to by Wilson as “panels.” It is therefore requested that the present rejections be reconsidered and withdrawn.

Further, if the Examiner takes the position that the folded over reinforcing edge 30a of Fig. 21 is the “side panel” of Wilson, such interpretation should be consistently applied.

Specifically with respect to Claims 26, 32, and 33, Applicants have noted that there are no two piece panels within Wilson having proximal and distal portions. The Detailed Action has responded (second paragraph at page 7 of the Detailed Action) that the “materials disclosed by Wilson as the reinforcement strip and elastic strip are fully capable of functioning as two-piece-panels and an elastomeric [sic] side panels, respectively.” Applicants respectfully disagree that a reasonable interpretation of “two piece, with proximal and distal portions” can include the reinforced side edge portion 30a (Fig 21) of Wilson. However, if the Examiner has defined “side panels” 22, 24, 28, and 30 where the reinforcing material completely overlaps the edge of the cover member 12a, such “side panels” consequently show no portion more proximal or more distal within the two piece edge portion of the Examiner defined “side panels.” It is therefore requested that the present rejections be reconsidered and withdrawn.

Specifically with respect to Claims 35 and 38, Applicants noted that Wilson merely teaches a folding over of the chassis material with an elastic strip encased therein rather than a side panel made from elastomeric materials. The Detailed Action has responded (second paragraph at page 7 of the Detailed Action) that the “materials disclosed by Wilson as the reinforcement strip and elastic strip are fully capable of functioning as two-piece-panels and an elastomeric [sic] side panels, respectively.” Applicants respectfully disagree. Wilson refers to elastic materials only with respect to its top edge portion 21 and arcuate crotch portions 32, 34 and not with respect to the Examiner defined “side panels” 22, 24, 28, and 30. The Examiner defined “side panels”

receive only reinforcement tape 138 which is not taught as elastic. Thus Wilson provides no teaching of a “side panel” with elastomeric properties per the present Claims. It is therefore requested that the present rejections be reconsidered and withdrawn.

Specifically with respect to Claims 41 and 42, Applicants have noted that Wilson does not show that the distal edges of the side panels for each side of the garment are not collinear as recited in the Claims. The Detailed Action has responded (third paragraph at page 7 of the Detailed Action) that the distal edges of the left side of the garment shown by Wilson in Fig. 4 are shown to be not collinear. Applicants, upon placing a straight edge on the distal edges of the left side of the garment shown by Wilson in Fig. 4, believe that the edges are so close to collinear as to be un-noticeable in their non-collinearity by the person having ordinary skill in the art. With full knowledge of the present invention, the Detailed Action has taken what is likely nothing more than a draftsman's casual work product or printer's distortion and elevated it to a teaching anticipating the present invention. It is noted that Wilson does not suggest anywhere else that its edges should not be collinear nor is there a rational explanation offered by the Detailed Action as to why only one side of the presumably symmetrical garment's distal edges should not be collinear. When considering the teachings of the reference as a whole, it is clear that there is no teaching of the present limitation by Wilson, but only an impermissible *post hoc* elevation of a drawing aberration to an anticipatory teaching. It is therefore requested that the present rejections be reconsidered and withdrawn.

Specifically with respect to Claims 43 and 44, Applicants noted that Wilson merely teaches the riveting of snaps into the chassis material rather than its fastening components be integral with a surface of a side panel as claimed. The Detailed Action has

responded (fourth paragraph at page 7 of the Detailed Action) that “the snaps are attached to the chassis such that they are then formed as a unit, or integral to each other.”

It is clear that the Examiner has ignored the definition of “integral” set forth by Applicants in the specification and has applied a specious *post hoc* definition of “integral” with knowledge of the present invention firmly in mind.

Per page 9, line 4 of the application:

“Integral” or “integrally” is used to refer to various portions of a single unitary element rather than separate structures bonded to or placed with or placed near one another.

Given the Applicants’ definition, no reasonable person having ordinary skill in the art would construe the mechanically assembled riveted fasteners and cover member material of Wilson as being integral. It is therefore requested that the present rejections be reconsidered and withdrawn.

Claim Rejections 35 USC § 103

Claims 7-12 and 18-25 stand rejected as obvious over Wilson and further in view of Anderson (US Patent 5,062,839). Applicants previously noted with respect to Claims 9, 10, 20, and 21, and the Detailed Action admitted, that Anderson is silent as to the exact arrangement of its hook and loop fasteners. The previous and present Office Actions have deemed the claimed arrangement of Claims 9, 10, 20 and 21 to be “obvious matters of design choice ... as the applicant has not shown that such a placement serves any particular purpose or solves any specific problem.” (see page 5 of the Detailed Action) Applicants previously traversed citing extensive discussion in the specification, e.g., pages 2-5 and 15-16, making clear that the exemplary and claimed embodiments of the invention are designed to solve specific problems by providing specifically enhanced functionalities

through the claimed arrangement of parts. As the present Detailed Action has not addressed this argument, Applicants respectfully maintain their traversal of the present rejections, reiterate all arguments, and incorporate the same by reference herein, and respectfully request reconsideration and withdrawal of the rejections.

Claims 13, 34, 36, 37, 39, and 40 stand rejected as obvious over Wilson in view of Ashton (US Patent 6,443,940; hereinafter "Ashton"). Applicants respectfully traverse all said rejections.

With respect to Claims 13 and 34, Applicants previously discussed that the nondisposable chassis construction of Wilson would neither accommodate nor have any need of the claimed line of weakness. Especially with respect to the Examiner defined "side panels" 22, 24, 28, and 30, it is believed that the reinforced nature of such a "side panel" would preclude any suggestion of providing a line of weakness within the Examiner defined "side panels" to one of ordinary skill in the art. Therefore Wilson and Ashton provide no motivation for such a combination and the present rejections must be withdrawn.

It is also the continuing contention of the Detailed Action that Wilson teaches all aspects of the claimed invention except elastomeric side panels per Claims 36, 37, 39 and 40. (see page 6, paragraph 5) It is noted that this statement is inconsistent with the Examiner's remarks at page 7 second paragraph, where it is asserted that Wilson's "side panels" can function elastomerically. Clarification is requested. Applicants previously noted that Wilson's cover member, a nondisposable one piece chassis construction, does not suggest accommodation for the claimed elastomeric side panels. Neither of Wilson or Ashton provide a suggestion to the person of ordinary skill in the art for the construction of a hybridized garment on the basis of their teachings. The vague

motivation of improvement, which comes solely from the Detailed Action, does not rise to the level of a *prima facie* suggestion to combine the disparate construction techniques of the two references. Only with impermissible hindsight would such a combination of the permanent chassis of Wilson and the nonpermanent chassis of Ashton be suggested. Applicants therefore respectfully maintain their traversal of the present rejections, reiterate all arguments, and incorporate the same by reference herein, and respectfully request reconsideration and withdrawal of the rejections.

As per Applicants' above discussion, it is not believed that a proper interpretation of Wilson as a whole, or its comparison to a proper interpretation of the present Claims has been made. In light of the foregoing discussion, Applicants maintain their traversal of the present rejection, reiterate all arguments, and incorporate the same by reference herein, and respectfully request reconsideration and withdrawal of the rejection.

Clearly, the references themselves do not provide a suggestion of combinability to practice the presently claimed invention, or any likelihood of success for the suggested combinations of references. Rather, the Detailed Action has impermissibly used the claims as a template to pick and chose those sections of the cited art which meet the individual limitations, rather than viewing the present invention (and the cited references) as a whole. Therefore, a *prima facie* case of obviousness has not been made by the Detailed Action and the present rejections should be reconsidered and withdrawn.

For all the foregoing reasons, all claims presently under consideration are believed to be allowable over the art of record. A notice to that effect is earnestly solicited.

Request For Telephonic Interview

Clearly, there are differences between the present invention and the cited reference(s) involving patentable subject matter. These differences are believed by the Applicants to be properly defined in the present Claims. The Examiner is requested to call Applicants' attorney (per the provisions of M.P.E.P. § 713) to discuss any further problems or suggest solutions in defining the present invention in order to expedite the case towards allowance.

Favorable consideration is requested.

Respectfully submitted,



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